IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.352 OF 2003

IN

SUMMARY SUIT NO.39 OF 2003

IAL Container Lines (UK) Ltd & ors.. Plaintiff

versus

AlRab Enterprises & ors .. Defendants

Ms.Bharti Narichania i/b Vibha Juris Consultant for Plaintiff.

CORAM : D.G. KARNIK, J

DATED : 24th January 2005.

P.C:-

1. This Summons for Judgment is taken out against the defendant nos. 2 to 4. According to the plaintiff, it carried goods for the defendant nos. 1 and 2 and issued bills. The defendants have not paid and therefore this suit. The defendant nos. 3 and 4 are said to be the partners of defendant no. 2 and hence liable.

2. The defendant nos. 2 to 4 have stated that the defendant no. 2 was acting only as an agent of defendant no.1 and therefore not liable. That apart, the defendant no. 2 has raised defences that freight has already been paid and therefore he is not liable. The bill of lading uses the words " prepaid" indicating that freight was prepaid. Therefore, the defence of the defendant nos. 2 to 4 that freight might have been paid cannot be said to be a defence which is a moonshine defence. In the circumstances, the defendants are required to be granted unconditional leave. Accordingly, the defendant nos. 2 to 4 are granted unconditional leave to defend the suit. The defendants to file the written statement within 6 weeks. Suit shall stand transferred to the list of commercial causes.

D.G.KARNIK, J